

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

San Francisco Technology Inc.

DEFENDANTS

Howell Ventures Ltd.

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Kathryn G. Spelman, Esq., Daniel H. Fingerman, Esq., Mount & Stoelker,
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95110; (408) 279-7000

CV 10-05575

MEJ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. Section 292

Brief description of cause:

False patent marking

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 500 per offense

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE☐ EUREKA

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/8/2010

FILED
2010 DEC - 8 P 3:38
RICHARD W. WEXING
CLERK U.S. DISTRICT COURT
#16 Lee
Ref

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U.S. District Court
Northern District of California

San Francisco Technology Inc.

Plaintiff

vs.

Howell Ventures Ltd.

Defendant

Case No. **C V 10-05575**

Complaint

Demand For Jury Trial

MEJ

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Options, Driving Specialties, and Nor-Cal Mobility.¹

Intradistrict Assignment

7. This case is appropriate for District-wide assignment under Civil Local Rule 3-2(c) because the claims in this Complaint arise under 35 U.S.C. § 292, which is codified with the patent statutes.

Howell Ventures' False Marking

8. SF Tech incorporates by reference all above allegations.

9. Upon information and belief, Howell Ventures makes and sells many types of products, including the Sure Grip Hand Controls with AutoLock (the "Accused Product").

10. Howell Ventures causes or contributes to the marking and advertising of products with the U.S. Patent No. 4,993,509, including, but not limited to, the Accused Product.

11. U.S. Patent No. 4,993,509, entitled "Vehicle hand control device", issued on February 19, 1991.

12. Howell Ventures individually marks the Accused Product:

MADE IN CANADA BY:
HOWELL VENTURES LTD.
US PAT. # 4993509

13. U.S. Patent No. 4,993,509 is an expired patent. Upon information and belief, U.S. Patent No. 4,993,509 expired no later than February 19, 1999. Upon information and belief, U.S. Patent No. 4,993,509 would have naturally expired no later than February 3, 2010, but it expired earlier because the patentee decided not to pay a maintenance fee.

14. Howell Ventures' falsely marked products are being sold in 2010 with such false markings, after the expiration of U.S. Patent No. 4,993,509. A Sure Grip Hand Control with AutoLock marked "SERIAL # 21596" was sold on or about August 30, 2010.

15. Howell Ventures is a sophisticated company and has many years of experience applying for, obtaining, and maintaining patent rights. Howell Ventures also has extensive experience manufacturing products and either marking or not marking them with words or numbers indicating that such products are protected by patents or pending applications.

¹ <http://www.suregrip-hvl.com/dealerlocator.html?dealercountry=USA&dealerprovince=CA>

1 16. Howell Ventures (including Howell Ventures' patent counsel) knew or should have
2 known that the term of U.S. Patent No. 4,993,509 expired no later than its expiration date.

3 17. Howell Ventures is no longer paying maintenance fees to the United States Patent and
4 Trademark Office to maintain U.S. Patent No. 4,993,509.

5 18. Howell Ventures knew or should have known that U.S. Patent No. 4,993,509 had
6 already expired at the same time Howell Ventures was marking and advertising products with U.S.
7 Patent No. 4,993,509.

8 19. Howell Ventures knows, or reasonably should know, that U.S. Patent No. 4,993,509
9 does not protect the Accused Product, or any products whatsoever.

10 20. Howell Ventures could have no reasonable belief that it was proper to mark and
11 advertise products with the numbers of the expired U.S. Patent No. 4,993,509, and the false marking
12 was done with intent to deceive the public by, including, but not limited to, misusing its patent rights
13 to extend the term of its patents and inhibiting competition.

14 21. Upon information and belief, Mobility Products & Design is and has been a
15 competitor of Howell Ventures for many years in the making and selling of assistive devices that
16 enable persons with physical disabilities to drive automobiles. Upon information and belief, Mobility
17 Products & Design initially intended to make and sell a product substantially identical to the Accused
18 Product in or around 2002. Upon information and belief, Mobility Products & Design began making
19 and selling a product substantially identical to the Accused Product in or around 2009. Upon
20 information and belief, Mobility Products & Design delayed making and selling a product
21 substantially identical to the Accused Product because Howell Ventures labeled the Accused Product
22 with: "US PAT. # 4993509." Upon information and belief, Mobility Products & Design understood
23 the marking "US PAT. # 4993509" to mean that U.S. Patent No. 4,993,509 actually covered the
24 Accused Product and was currently active and unexpired. Upon information and belief, Mobility
25 Products & Design relied on Howell Ventures' marking on the Accused Product and was actually
26 deceived into believing that U.S. Patent No. 4,993,509 covered the Accused Product from the period
27 2002 – 2009. Upon information and belief, Mobility Products & Design, and its principals, lost profit
28 and income and were otherwise harmed by Howell Ventures' false marking.

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22. For at least the reasons set forth herein, Howell Ventures has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely benefited in at least maintaining its market share in the marketplace.

23. For at least the reasons set forth herein, Howell Ventures has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely caused the retail price of its Accused Product to be inflated above normal market levels, and has caused the public to face inflated prices for its products.

24. The public deception, and/or competitive harm caused by each of Howell Ventures' false markings has and continues to harm the United States and the public, including relator SF Tech, a representative of the public incurring the cost and time associated with this enforcement.

Demand For Judgment

SF Tech demands judgment against Howell Ventures, as follows:

1. A declaration that Howell Ventures violated 35 U.S.C. § 292.
2. An accounting of the number, sales, and revenue of any falsely marked articles not presented at trial.
3. A civil fine of \$500 for each offense — half paid to the U.S., and half paid to SF Tech.
4. Costs, including attorney fees.
5. A finding that this is an exceptional case.
6. Any other relief the court deems appropriate.

Demand For Jury Trial

SF Tech demands a jury trial on all issues so triable.

Date: November 29, 2010

Mount & Stoelker, P.C.,
/s/ Dan Fingerman

Counsel for San Francisco Technology Inc.

